

May 27, 2005

Irene Sundberg  
Tracy City  
47 W 10<sup>th</sup> Street  
Tracy, CA 95376

**Re: Your Request for Advice  
Our File No. A-05-087**

Dear Ms. Sundberg:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the “Act”)<sup>1</sup> regulating the receipt of contributions and gifts.

### **QUESTION**

Will payments made to you or solicited by you for Tracy Interfaith Ministries (“TIM”) a local non-profit, established to provide local food pantry and social services, constitute reportable campaign contributions or gifts to you?

### **CONCLUSION**

Under the facts you have provided, the payments will be received principally for a charitable purpose. Thus the payments fall under amendments in 1997 to the definition of “contribution” for co-sponsored events, and are not reportable contributions or gifts to you. However, there is required public disclosure of these payments once a threshold is met and exceeded. See discussion below.

### **FACTS**

You have been involved in the fundraising of TIM, a non-profit which provides a local food pantry and social services. TIM has been raising money for a new building for the last several years. You were elected in November of 2004 to the Tracy city council. Prior to this you volunteered as a helper on TIM’s fundraising efforts and personally

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

donated items to be auctioned, but never earned over \$5,000. In October 2004 you purchased a gift shop in the downtown, named Primrose Lane II. The gift shop is well known in town and you received publicity in the local paper as the shop's new owner. In February 2005, you were asked to become a member of the building committee, a sub-committee established to oversee the completion of the project, as the public relations person. Everyone on the committee has helped with fundraising projects or asking for in-kind services. You have volunteered space in your store to showcase collectibles for purchase, with all moneys going back to TIM. You have turned in over \$700 for this project since April 2005. In past years, you have also donated baskets to be raffled off as you do for many of the non-profits you have done volunteer work for.

Until recently you had never earned more than \$5,000 at any one fundraising event. Your name has never appeared on any advertising that has been done for TIM but your store's name has appeared on advertising or flyers. The store is listed as the location where to buy tickets to TIM fundraising events and to where one may purchase the collectibles to benefit TIM.

The members of the building committee (including yourself) have worked as a group, with community organizations such Lyon's clubs, churches and developers on various benefits and fundraisers, collecting over \$500,000 in donations for the building fund and expect to raise more money in the next several months.

## ANALYSIS

### *Applicable Law:*

Generally, when a payment is made to an elected official, such a city council member, and that official does not provide something of equal value in exchange, it is considered to be either a contribution or a gift. (See sections 82015 and 82028.)

The Act defines a "contribution" as a payment, except to the extent that full and adequate consideration is received by a candidate,<sup>2</sup> unless it is clear from the circumstances that it is not made for political purposes. (Section 82015.)

The definition of "contribution" was amended in 1997 with respect to payments made at the behest of candidates, impacting events co-sponsored by elected officials, and governmental and non-profit organizations or private organizations. The stated purpose of the amendment is set forth in the Senate Floor analysis was as follows:

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<sup>2</sup> Section 82007 defines a "candidate" in pertinent part, as an individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214. As an elected official, you have current status as a candidate for purposes of the Act.

“This bill recognizes that elected officeholders engage in governmental, legislative and charitable activities which are neither ‘campaign’ activities nor ‘personal’ activities. Payments made by others to assist in the conduct of such governmental, legislative, or charitable activities, even ‘at the behest of’ an elected officeholder are neither ‘gifts’ nor ‘contributions’ and should not be subject to limits. The bill does, however, require public disclosure of these payments once a threshold is met and exceeded.”

As amended, section 82015(b)(2) states that a payment is made for “*political purposes*” if it is *received by or made at the behest* of a candidate. A payment is made “at the behest” of a candidate whenever it is made “under the control or at the direction of, *in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of*” a candidate. (Section 82015; Regulation 18225.7, copy enclosed.) Because you are an elected official and continue to have status as a candidate under section 82007, this is applicable to you.

A payment is *made for “political purposes”* unless the criteria in either subparagraph (A) or (B) below are satisfied:

“(A) Full and adequate consideration is received from the candidate.

“(B) It is clear from the surrounding circumstances that the payment was made for purposes unrelated to his or her candidacy for elective office. The following types of payments are presumed to be for purposes unrelated to a candidate’s candidacy for elective office:

“(i) A payment made principally for personal purposes, in which case it may be considered a gift under the provisions of Section 82028. Payments that are otherwise subject to the limits of Section 86203 are presumed to be principally for personal purposes.

“(ii) A payment made by a state, local, or federal governmental agency or by a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

“(iii) A payment not covered by clause (i), made principally for legislative, governmental, or charitable purposes, in which case it is neither a gift nor a contribution ....”

According to your facts, you have taken on public relations responsibilities as a member of a subcommittee charged with overseeing the completion of the building project. You also set aside space in your downtown gift shop to sell collectible items that would benefit TIM. You collect all the proceeds and give them back to the non-profit. You state that your name has not appeared on any advertisements for fundraising events,

but that your store's name has appeared on advertising or flyers. It is listed as the location where to buy tickets to TIM fundraising events and where one may purchase the collectibles to benefit TIM.

You have not described materials that were used to advertise the fundraising events, nor have you provided us examples of this material. However, facts you provided indicate that others made payments in cooperation, consultation, coordination, or concert with you or at your request or suggestion. These facts include: you hold a position as a member on TIM's building committee and all the committee members have helped with fundraising projects or have asked for volunteer services; and the fact that you have turned over more than \$700 for this project since April 2005. Therefore, we conclude that payments in support of the events in question were made at your behest. (Section 82015; Regulation 18225.7, copy enclosed.)

You further stated in your letter that all proceeds of sales of collectibles and other fundraising events will be forwarded to TIM. Thus, the payments will be received by a local non-profit for a charitable purpose and not for campaign or personal purpose. Pursuant to section 82015(b)(2)(B)(iii), the payments will be neither reportable gifts nor contributions.

Please note that even though payments are not reportable contributions or gifts to you, it is still important to caution that this conclusion is *fact sensitive*. Under some circumstances, these payments could still be construed to be gifts or contributions to you. For instance, if some or all of the funds are used for some other purpose, other than to fund the building for the non-profit, then you will have received reportable gifts or contributions in the amounts not used by the non-profit. (*Jones* Advice Letter, No. A-94-072.) However, to the extent that the funds are actually given to the non-profit, there is no reportable gift or contribution made to you. Instead, there is a gift from the donor to the non-profit.

*Reportable Payments/Limited Reporting Requirement:*

Even when payments fall into this exception, there is limited reporting of these payments. (Section 82015(b)(2)(B)(iii), copy enclosed.) The payments must be reported as follows:

“... payments of this type that are made at the behest of a candidate who is an elected officer shall be reported within 30 days following the date on which the payment or payments equal or exceed five thousand dollars (\$ 5,000) in the aggregate from the same source in the same calendar year in which they are made. The report shall be filed by the elected officer with the elected officer's agency and shall be a public record subject to inspection and copying pursuant to the provisions of subdivision (a) of Section 81008. The report shall contain the following information: name of payor, address of payor, amount of the payment,

date or dates the payment or payments were made, the name and address of the payee, a brief description of the goods or services provided or purchased, if any, and a description of the specific purpose or event for which the payment or payments were made. Once the five thousand dollars (\$ 5,000) aggregate threshold from a single source has been reached for a calendar year, all payments for the calendar year made by that source must be disclosed within 30 days after the date the threshold was reached or the payment was made, whichever occurs later. Within 30 days after receipt of the report, state agencies shall forward a copy of these reports to the Fair Political Practices Commission, and local agencies shall forward a copy of these reports to the officer with whom elected officers of that agency file their campaign statements.” (Section 82015(b)(2)(B)(iii).)

You stated in your letter, that you have received donations well over \$500,000 for the building fund and expect to raise more in the next several months. Thus, you are required to file a report with your agency for public disclosure, if you meet the above reporting threshold. However, if the amount behested from a single source is not more than \$5,000, no reportable payment as contemplated by section 82015 occurs.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

By: Emelyn Rodriguez  
Counsel, Legal Division

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